Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KAREN MARIE KLINE,

Petitioner,

v.

INTERNAL REVENUE SERVICE,
UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ of Certiorari To The United States Court of Appeals for the Tenth Circuit

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PETITION FOR WRIT OF CERTIORARI

Karen Marie Kline, pro se
729 W. Manhattan #3
Santa Fe, New Mexico 87501
(505) 820-6656

July 7, 2002

75 pp

Where debtor was put out of business by IRS levies: for 1984, where IRS put payment into 1985 which was not due, charged penalties/interest for 1984, ran paid years through 1984, creating debt, and levied twice more so that after letters to IRS, Congress, etc., *U.S. News and World Report* told story but couldn't stop foreclosures, suicide attempt, and Chapter 11,

1. Whether questions of statutory construction are legal grounds to object to IRS being a creditor and filing proof of claim.

2. Whether income is a legitimate subject of taxation, or

3. Whether "taxable income", which is statutorily defined, must be identified in order to establish tax liability.

4. Whether statutorily defined "taxable year" may be left out of quote of statute which should be considered in pari materia.

5. Whether the fact of the tax laws applying to Kline is indistinguishable from Kline or an activity of Kline's being made subject to or liable for a tax.

6. Whether the IRS's cite, "For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax", *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied on other questions, 500 U.S. 920, 111 S.Ct. 2022, 114 L.Ed.2d 108, (U.S. May 13, 1991), is in conflict.

7. Whether IRS proof of claim should be declared invalid and void under Bankruptcy Rule 3001(b) or 3003 sans debtor being made subject to or liable for internal revenue tax and taxable income being identified.

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There are no published opinions in this case.

JURISDICTION

The Order and Judgment of the United States Court of Appeals for the Tenth Circuit was entered on February 8, 2002, App.16. Petitioner timely filed, on March 25, 2002, petition for rehearing or en banc determination. The Court entered its order denying the petition on April 8, 2002, App. 20.

This Court has jurisdiction to issue a writ of certiorari to the United States Court of Appeals for the Tenth Circuit pursuant to 28 USC §1254.

CONSTITUTION / STATUTES / REGULATIONS

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
>
> To borrow Money on the credit of the United States;
>
> To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes...

United States Constitution, Article I, Section 8.

> No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.
>
> No Tax or Duty shall be laid on Articles exported from any State.

United States Constitution, Article I, Section 9

> New States may be admitted by the Congress to this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any Sate be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the

> Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

United States Constitution, Article IV, Section 3

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Article VI.

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

United States Constitution, Amendment XVI.

> **§1. Tax imposed. (a) Married individuals filing joint returns and surviving spouses.** There is hereby imposed on the taxable income of –
>
> (1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and
>
> (2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table… (table not included)
>
> **(b) Heads of households.** There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table… (not included)
>
> **(c) Unmarried individuals (other than surviving spouses and heads of households).** There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual(as defined in section 7703) a tax determined in accordance with the following table… (not included)

26 USC §1, verbatim in pertinent part.

§61. Gross income defined.

(a) General definition. Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains from dealings in property;

(4) Interest;...

26 USC §61, verbatim but not listing all 15 items .

§1.61-1 Gross income.

(a) General definition. Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, means, accommodations, stock, or other property, as well as in cash. Section 61 lists the more common items of gross income for purposes of illustration. For purposes of further illustration, §1.61-14 mentions several miscellaneous items of gross income not listed specifically in section 61. Gross income, however, is not limited to the items so enumerated.

26 CFR §1.61-1.

§63. Taxable income defined.

(a) In general. Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) Individuals who do not itemize their deductions. In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus—

(1) the standard deduction, and

(2) the deduction for personal exemptions provided in section 151.

(c) Standard deduction. For purposes of this subtitle—

(1) In general. Except as otherwise provided in this

subsection, the term "standard deduction" means the sum of —

(A) the basic standard deduction, and

(B) the additional standard deduction.

(2) Basic standard deduction. [Caution: For tax years beginning in 2000, see §3.05(1) of Rev. Proc. 99-42 (26 USCS §1 note) for standard deduction amounts under this paragraph.] For purposes of paragraph (1), the basic standard deduction is—

(A) $5,000 in the case of —

(i) a joint return, or

(ii) a surviving spouse (as defined in section 2 (a)),

(B) $4,400 in the case of a head of household (as defined in section 2(b)),

(C) $3,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, or

(D) $2,500 in the case of a married individual filing a separate return.

(3) Additional standard deduction for aged and blind. Not applicable ("N/A") so not quoted ("N/Q").

(4) Adjustments for inflation. In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2) or (5) or subsection (f) shall be increased by an amount equal to –

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting for 'calendar year 1992' in subparagraph (B) thereof —

(i) 'calendar year 1987' in the case of the dollar amounts contained in paragraph (2) or (5)(A) or subsection (f), and

(ii) 'calendar year 1997' in the case of the dollar amount contained in paragraph (5)(B).

(5) Limitation on basic standard deduction in the case of certain dependents...no dependants N/A N/Q

(6) Certain individuals, etc., not eligible for standard deduction. In the case of –

(A) a married individual filing a separate return

where either spouse itemizes deductions,

(B) a nonresident alien individual,

(C) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period, or

(D) an estate or trust, common trust fund, or partnership, the standard deduction shall be zero.

(d) Itemized deductions. For purposes of this subtitle, the term "itemized deductions" means the deductions allowable under this chapter other than--

(1) the deductions allowable in arriving at adjusted gross income, and

(2) the deduction for personal exemptions provided by section 151.

(e) Election to itemize. (1) In general. Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Time and manner of election. Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such selection on the return.

(3) Change of election. Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be

agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

(f) Aged or blind additional amounts... N/A, N/Q.

(g) Marital status. For purposes of this section, marital status shall be determined under section 7703.

26 USC §63, in pertinent part.

§ 441. Period for computation of taxable income.

(a) Computation of taxable income. Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable year. For purposes of this subtitle, the term taxable year' means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies [(g)(1) the taxpayer keeps no books...]

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a FSC or DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

26 USC §441(a)(b)

(g) No books kept; no accounting period. Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

26 USC §441(g)

§861. Income from sources within the United States.

(a) Gross income from sources within United States. The following items of gross income shall be treated as income from sources within the United States:

(1) Interest. from the United States, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations not including—

(A) interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1), and

(B) interest—

(i) on deposits with a foreign branch of a domestic corporation or a domestic partnership if such branch is engaged in the commercial banking business, and

(ii) on amounts satisfying the requirements of subparagraph (B) of section 871(i)(3) which are paid by a foreign branch of a domestic corporation or a domestic partnership.

(2) Dividends. The amount received as dividends—

(A) from a domestic corporation – N/A, N/Q.

(B) from a foreign corporation – N/A, N/Q.

(C) from a foreign corporation to the extent – N/A, N/Q.

(D) from a DISC or former DISC (§992. Requirements of a domestic international sales corporation) – N/A, N/Q.

(3) Personal services [Caution: For provisions applicable to remuneration for services performed in plan years beginning on or before December 31, 2001, see note below relating to amendment made by §621(a) of P. L 107-16.] Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceed-

ing a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with-

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office of place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

In addition, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.

(4) Rentals and royalties. Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes, and formulas, good will, trade-marks, trade brands, franchises, and other like property.

(5) Disposition of United States real property interest. Gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)).

(6) Sale or exchange of inventory property. Gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) without the United States (other than within a possession of the United States) and its sale or exchange within the United States.

(7) Amounts received as underwriting income N/A, N/Q.

(8) Social security benefits. N/A, N/Q.

(b) Taxable income from sources within United States. From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States, In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(c) Foreign business requirements. N/A, N/Q.

(2) Look-thru where related person receives interest. (A) In general. In the case of interest received by a related person from a resident alien individual or domestic corporation – N/A, N/Q.

(d) Special rule for application of subsection (a)(2)(B). N/A, N/Q.

(e) Income from certain railroad rolling stock – N/A, N/Q.

(f) Cross reference. For treatment of interest paid by the branch of a foreign corporation – N/A, N/Q.

26 USC §861(a)(b), in pertinent part.

§1.861-1 Income from sources within the United States.

(a) *Categories of income.* Part 1, subchapter N, chapter 1 of the Code, and the regulations thereunder determine the sources of income for purposes of the income tax. These sections explicitly allocate certain important sources of income to the United States or to areas outside the United States, as the case may be; and, with respect to the remaining income (particularly that derived partly from sources within and partly from sources without the United States), authorize the Secretary or his delegate to determine the income derived from sources within the United

States, either by rules of separate allocation or by processes or formulas of general apportionment. The statute provides for the following three categories of income:

(1) *Within the United States.* The gross income from sources within the United States, consisting of the items of gross income specified in section 861(a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See §§1.861-2 to 1.861-7, inclusive, and §1.863-1. The taxable income from sources within the United States, in the case of such income, shall be determined by deducting therefrom, in accordance with sections 861(b) and 863(a), the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. See §§1.861-8 and 1.863-1.

(2) *Without the United States.* The gross income from sources without the United States, consisting of the items of gross income specified in section 862(a) plus the items of gross income allocated or apportioned to such sources in accordance with section 863(a). See §§1.862-1 and 1.863-1. The taxable income from sources without the United States, in the case of such income, shall be determined by deduction therefrom, in accordance with sections 862(b) and 863(a), the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any other expenses, losses, or deductions which cannot definitely be allocated to some item or class of gross income. See §§1.862-1 and 1.863-1.

(3) *Partly within and partly without the United States.* The gross income derived from sources partly within and partly without the United States, consisting of the items specified in section 863(b)(1),(2), and (3). The taxable income allocated or apportioned to sources within the United States, in the case of such income, shall be determined in accordance with section 863(a) or (b). See §§1.863-2 to 1.863-5, inclusive.

(4) *Exceptions.* About aircraft/vessels, N/A, N/Q.

(b) *Taxable income from sources within the United States.* The taxable income from sources within the United States shall consist of the taxable income described in

paragraph (a)(1) of this section plus the taxable income allocated or apportioned to such sources, as indicated in paragraph (a)(3) of this section.

(c) *Computation of income.* If a taxpayer has gross income from sources within or without the United States, together with gross income derived partly from sources within and partly from sources without the United States, the amounts thereof, together with the expenses and investment applicable thereto, shall be segregated; and the taxable income from sources within the United States shall be separately computed therefrom.

26 CFR §1.861-1.

1.861-8 Computation of taxable income from sources within the United States and from other sources and activities. *(a) In general—(1) Scope.* Sections 861(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined. Sections 862(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources without the United States after gross income from sources without the United States has been determined. This section provides specific guidance for applying the cited Code sections by prescribing rules for the allocation and apportionment of expenses, losses, and other deductions (referred to collectively in this section as "deductions" of the taxpayer. The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections. The operative sections include, among others, sections 871(b) and 882 (relating to taxable income of a nonresident alien individual or a foreign corporation which is effectively connected with the conduct of a trade or business in the United States), section 904(a)(1) (as in effect before enactment of the Tax Reform Act of 1976, or section 904(a) after such enactment, relating to taxable income from all sources without the United States).

26 CFR §1.861-8(a)(1)

§1.861-8(a)(4) *Statutory grouping of gross income and residual grouping of gross income.* For purposes of this section, the term "statutory grouping of gross income" or "statutory grouping" means the gross income from a specific source or activity which must first be determined in order to arrive at "taxable income" from which specific source or activity under an operative section. (See paragraph (f)(1) of this section.) Gross income from other sources or activities is referred to as the "residual grouping of gross income" or "residual grouping." For example, for purposes of determining taxable income from sources within specific foreign countries and possessions of the United States, in order to apply the per-county-limitation to the foreign tax credit (as in effect before enactment of the Tax Reform Act of 1976), the statutory groupings are the separate gross incomes from sources within each country and possession. Moreover if the taxpayer has income subject to section 904(d) (as in effect after enactment of the Tax Reform Act of 1976). Such income constitutes of one or more separate statutory groupings. In the case of the per-country limitation, the residual grouping is the aggregate of gross income from sources within the United States. In some instances, where the operative section so requires, the statutory grouping or the residual grouping may include, or consist entirely of, excluded income. See paragraph (d)(2) of this section with respect to the allocation and apportionment of deductions to excluded income.

26 CFR §1.861-8(a)(4)

§1.861-8(f)(1) Miscellaneous matters—(1) Operative sections. The operative sections of the Code which require the determination of taxable income of the taxpayer from specific sources or activities and which gives rise to statutory groupings to which this section is applicable include the sections described below

(i) *Overall limitation to the foreign tax credit* N/A, N/Q.

(ii) [Reserved]

(iii) *DISC and FSC taxable income...* [international and foreign sales corporations] N/A, N/Q.

(iv) *Effectively connected taxable income.* Nonresident alien individuals and foreign corporations engaged in

trade or business within the United States...N/A, N/Q.

(v) *Foreign base company income*... N/A, N/Q

(vi) *Other operative sections.* The rules provided in this section also apply in determining—

(A) The amount of foreign source items... N/A, N/Q

(B) The amount of foreign mineral income... N/A, N/Q

(C) [Reserved]

(D) The amount of foreign oil and gas extraction income... N/A, N/Q.

(E) The tax base for citizens entitled to the benefits of section 931 and the section 936 tax credit... (deals with Puerto Rico tax credits) N/A, N/Q.

(F) The exclusion for income from Puerto Rico for residents of Puerto Rico under section 933;

(G) The limitation under section 934 on the maximum reduction in income tax liability incurred to the Virgin Islands;

(H) The income derived from Guam... N/A, N/Q.

(I) The special deduction granted to China Trade Act corporations under section 941;

(J) The amount of certain U.S. source income excluded from the subpart F income of a controlled foreign corporation under section 952(b);

(K) The amount of income from the insurance of U.S. risks under section 953(b)(5);

(L) The international boycott factor... N/A, N/Q.

(M) The taxable income attributable to the operation of an agreement vessel... N/A, N/Q.

26 CFR §1.861-8(f)(1), verbatim in pertinent part.

§871. Tax on nonresident alien individuals.

(b) Income connected with United States business—graduated rate of tax. (1) Imposition of tax. A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

26 USC §871(b)(1), verbatim in pertinent part.

§1313. Definitions.

(b) Taxpayer. Notwithstanding section 7701(a)(14), the term 'taxpayer' means any person subject to a tax under the applicable revenue law.

26 USC §1313(b)

§6001. Notice or regulations requiring records, statements, and special returns. Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

26 USC §6001

§6011. General requirement of return, statement, or list. (a) General rule. When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

26 USC §6011(a)

§6012. Persons required to make returns of income.

(a) General Rule. Returns with respect to income taxes under Subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

(i) who is not married (determined by applying section 7703), is not a surviving spouse(as defined in section 2(a)), is not a head of household (as defined in section 2(b), and for the taxable years has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii) who is a head of household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii) who is a surviving spouse… N/A, N/Q, or

(iv) who is entitled to make a joint return… N/A, N/Q

Clause (iv) shall not apply…N/A, N/Q.

26 USC §6012(a)(1)(A)i,ii,iii and iv

§7701. Definitions.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person. The term 'person' shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation…

(14) Taxpayer. The term 'taxpayer' means any person subject to any internal revenue tax.

26 USC §7701(a)(1)... and (14)

§7805. Rules and regulations.

(a) Authorization. Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as many be necessary by reason of any alteration of law in relation to internal revenue.

26 USC §7805

STATEMENT OF THE CASE

The bankruptcy court where this case originated, had jurisdiction under 28 USC §157(b)(2)(B).

Karen Marie Kline, ("Kline") is an individual who filed Chapter 11 on May 27, 1997, as a result of IRS actions. IRS timely filed proof of claim for $52,300 in unsecured priority claims and $14,240 in unsecured general claims.

Kline objected to proof of claim, saying that no amounts from any tax return, nor any assessed amounts were owing, that she denied being a taxpayer as term is defined in the IRC, and therefore IRS was not a creditor of hers.

At hearing, Kline described why she was invoking IRC definition of taxpayer to protect her, App. 21 - App. 27, and cited:

> Our system of taxation is based upon voluntary assessment and payment, not upon distraint.

Flora v. United States, 362 U.S. 145, (1959), App. 28, and:

> It is the established rule not to extend taxing statutes beyond the clear import of the language used or to enlarge their operations so as to embrace matters not specifically pointed out.

Gould v. Gould, 245 US 151, 153, (1917), App. 28, and:

> In cases of doubt, the taxing statutes are construed most strongly against the Government and in favor of those upon whom the tax is sought to be laid,

United States v. Merriam, 263 U.S. 179, 187, 188 (1923), App. 28.

IRS asked if she had income in years in question, App. 29 - App. 30. She did. App. 29 - App. 30. IRS did not identify taxable income, App. 29 - App. 31. When Court quoted 26 USC.§6012, omitting "taxable year", Kline objected. The Court filed its Order, March 24, 1999, App. 1, for IRS, saying,

> All individuals earning gross income equal to or in excess of the exemption amount are required to file tax returns. *See* I.R.C. §6012 (individual who is head of household is required to file tax return unless individual has gross income less than exemption amount plus the standard deduction)."

Whereas, what I.R.C. §6012 actually says, is:

> Persons required to make returns of income. (a) General rule. Returns with respect to income taxes

> under subtitle A shall be made by the following: (1)(A) Every individual having for the *taxable year* gross income which equals or exceeds the exemption amount... (Emphasis added.)
> (ii) who is a head of household (as so defined) and for the *taxable year* has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual... (Emphasis added.)

April 2, 1999, Kline timely filed, Motion for the Court to Amend its Findings and Amend its Judgment Accordingly, and she filed Memorandum of Law Regarding Income Taxes. Order denying Motion was filed January 31, 2000, App. 3. Kline timely filed notice of appeal, February 11, 2000. Record did not show Memorandum. Because she had file-stamped copy, record was corrected and district court magistrate stayed appeal, April 5, 2000, App. 4, for U.S.B.C. to read it. It did, then decided the same, on May 27, 2000, App. 9. Kline filed brief on extended deadline, September 22, 2000. Invoking IRC definition of "taxpayer" and in pari materia reading of §6012, she said IRS had not shown her subject to internal revenue tax, so IRS was not a creditor.

Stunningly, IRS' brief, p. 5, said,

> By earning an income the debtor is *considered* a taxpayer until such time as the taxpayer establishes that she did not make enough to require the filing of tax returns as provided for under 26 USC §6012 (a)(l) (A)i,ii,iii or iv." (Emphasis added.)

Magistrate Judge's Proposed Findings and Recommended Disposition to affirm, entered January 26, 2001, App. 10, cited 26 USC §§ 1, 63, 61, 6001, 6011, 6012, and 7203 re criminal penalty, App. 12. It did not fault appealed Order for omitting defined term from §6012, "quoted" in Order; it concluded §6012 was properly construed, App. 13; and it appeared to consider Kline a taxpayer, without showing that she met IRC definition of taxpayer, §7701 (a)(14), "any person subject to any internal revenue tax." Rather, it said §6012's requirements must be met by Kline unless she can show she is not subject to them, App. 13. At the same time, it ignored the defined terms she was using for that very purpose.

Kline timely objected that only a "taxpayer" has a "taxable year", defined at 26 USC §441(b): "taxpayer's annual accounting

period", that IRS must show her made subject to internal revenue tax and must identify her "taxable income", if any.

District court, February 15, 2001, App. 15, overruled objections, adopted Proposed Findings, and entered judgment for IRS.

April 16, 2001, Kline timely filed Notice of Appeal to the United Stated Court of Appeals for the Tenth Circuit, timely briefed, citing, "Where statute states what a term means, all other meanings not stated are excluded", *Johns-Manville Corp. v. U.S.*, 855 F.2d 1556, certiorari denied 109 S.Ct. 1342, 489 U.S. 1066, 103 L.Ed.2d 811 (1988), and many others. IRS' brief falsely said, "The courts below correctly ruled that debtor's claim of immunity from taxation is frivolous." There is no such ruling.

US Court of Appeals, Tenth Circuit entered Order and Judgment, February 8, 2002, App. 16, denying Rule 11 sanctions for which Kline had moved, and adopting thinking of IRS' brief, saying for example,

> On appeal the IRS states the only issue to be decided by this court is simply whether the federal income tax laws apply to Ms. Kline. The implication of that statement is that Ms. Kline is what was once designated by the IRS as an 'illegal tax protestor.'[1] App. 17. [1]Section 3707 IRS Restructuring and Reform Act of 1998, now prohibits the IRS from designating taxpayers internally as "illegal tax protestors" and requires the removal of existing designations after January 1, 1999... Prior to that Act, the IRS defined a "tax protestor" as an individual who advocates and/or uses a tax protest scheme. A tax protest scheme was further defined as any scheme without basis in law... Ronald I.Mirvis, Annotation, *Tax Protestor's Failure to Submit, or Submission* of *Erroneous* or *Incomplete Federal Income Tax Returns*...60ALR.Fed.158,160n.2.(1982) App. 17.

By ignoring Kline's pleading of Constitutional law, statutory definitions, statutory construction cases, and *Flora, supra,* the Court appeared to confirm IRS' "implication" that Kline was an illegal tax protestor, whose tax protest scheme was without basis in law. The Court appeared to deny any need for IRS to show "taxable income" belonging to Kline and said of Kline's reliance on statutory definitions, that "these arguments are circular, and similar to other frivolous arguments that attempt through tautology to

render the tax laws ineffective," App. 18, 19. It did not cite any case similar to Kline's, found bankruptcy court had explained how Kline was subject to the tax laws, App. 19, and affirmed, App. 19.

Having questioned being subject to the tax, not the tax laws, Kline timely filed Petition for Rehearing or En Banc Determination, in which she showed regulations for 26 USC §63, "taxable income defined", did not say how to determine taxable income, nor use the mandatory "shall", but regulations for §861 did, but only for listed sources, none of which applied to her.

Order denying was entered April 8, 2002, App. 20.

REASONS FOR GRANTING WRIT

1. A great number of Americans need to understand how the IRC applies to them and can protect them

A great number of Americans need to understand how the IRC applies to them and can protect them. *Brushaber v. Union Pacific RR. Co.*, 240 U.S. 1, at 18 (1916) is difficult to follow. In fact, the IRS brief, so heavily relied upon by the Tenth Circuit, used a Tenth Circuit misunderstanding of *Brushaber, supra:*

> [T]he argument that the sixteenth amendment does not authorize a direct, nonapportioned tax on United States citizens similarly is devoid of any arguable basis in law... For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct non-apportioned tax upon United States citizens throughout the nation...*United States* v. *Collins*, 920 F.2d 619,629 (10th Cir. 1990).Cert. denied on other questions, 500 U.S. 920, 111 S.Ct. 2022, 1144 L.Ed.2d 108 (U.S. May 13, 1991).

In Kline's motion for sanctions for misrepresentations, she asked that IRS provide Supreme Court case saying Sixteenth Amendment authorizes direct nonapportioned tax. Motion was denied.

Kline, who had struggled to understand why our tax system had to be based on "voluntary assessment", wondered if the Constitution really could require this. It was simpler if Congress could enact the tax directly on her money. Direct and indirect were so complicated. But, if it were simple, as IRS and the Tenth Circuit apparently thought, why had the Supreme Court said in

Flora, supra., that our tax laws are, "a carefully articulated and quite complicated structure."

She hoped it was because it had been too simple to put her and too many others out of business.

2. If only 3% of Americans levied at same time as Kline, suffered errors, that was 87,000 Americans in one year

Because Kline had suffered three levies, and not one had been right, she estimated that if only 3% of the 2.9 million Americans reported by *U.S. News & World Report*, App. 39, to have been levied in 1994 - the year she was levied out of business - suffered errors, that was 87,000 Americans in that one year alone who had been needlessly terrorized and attacked.

She decided to work as hard at reforming IRS as she had at being a Realtor, but ignorant of the IRC and CFR, all she could do was tell her story, App. 21 - App. 25, sending along proof of IRS' errors, App. 33 - App. 36, and hope others also wanted to stop the injustice.

By deciding that when her property was foreclosed she would kill herself to draw attention to IRS abuse, App. 24, she reduced her fear of IRS, since what could it do of like magnitude. But, she fell prey to a con artist selling "security" in trusts. When she declined, being by then in Chapter 11, he tried to take her home, saying she owed him. He'd said he was an LLM, tax expert, when he was not even a lawyer.

Many of the estimated 87,000 yearly wounded, like the old, are easy prey to greedy cons. Not all try to protect themselves from IRS with trusts, but many are conned. If it is tempting to say they deserve to be conned for being unpatriotic, then look at the huge amounts Americans give to charity. Most Americans are law-abiding, eager to contribute to their country, but afraid of being terrorized, attacked, even destroyed by IRS.

Americans deserve security and in many respects are Constitutionally entitled to it. The Supreme Court in *Flora, Supra.*, uses the words, "voluntary assessment", which definitely have the ring of security. If "voluntary assessment" is the needful result of the careful articulation of our complicated tax system and if this is what the Court has spoken, then "it is duty of other courts to respect that understanding of governing rule of law." *Rivers v. Roadway Exp. Inc.*, 114 S.Ct. 1510, 11 U.S. 298, 128 LEd.2d 274 (1993).

3. "The income is not the subject of the tax"

The Supreme Court said "[B]y the previous ruling [Brushaber] it was settled that the Sixteenth Amendment conferred no new power of taxation..." *Stanton v. Baltic Mining Co.*, 240 US. 103, (1916). So, the Sixteenth Amendment did not provide for tax directly on income, and the Treasury Secretary agreed:

> The provisions of the sixteenth amendment conferred no new power of taxation, but simply prohibited [Congress' original power to tax incomes] from being taken out of the category of indirect taxation, to which it inherently belonged, and being placed in the category of direct taxation subject to apportionment.

Treasury Decision 2303,

as did the Congressional Record:

> The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. *The income is not the subject of the tax:* it is the basis for determining the amount of tax. (Emphasis added)

House Congressional Record, March 27, 1943, P 2580.

> Thirty-two years earlier, the Supreme Court said,
> It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered non-taxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part at least, property which as such could not be directly taxed.

Flint v. Stone Tracy Co., 220 U5.107 (1911).

Hopeful indeed and significant.

4. "Legitimate subject of taxation"

In above cite, phrases, "legitimate subject of taxation", "the measure of taxation is found in the income", and "property which as such could not be directly taxed" are used together. Together, the phrases say that legitimate subjects of taxation exist and that in such cases income, even from things which in themselves are not taxable, as property, may be used to measure the tax. They do not say that income is or may be used as the subject of the tax.

"Taxable income" is a legitimate subject of taxation, in fact, the tax is imposed, 26 USC §1, on "taxable income":

> (a) Married individuals filing joint returns and surviving spouses. There is hereby imposed on the *taxable income* of —
>
> (1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and
>
> (2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table . . .
>
> (b) Heads of households. There is hereby imposed on the *taxable income* of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table...
>
> (c) Unmarried individuals (other than surviving spouses and heads of households). There is hereby imposed on the *taxable income* of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table...

26 USC §1, verbatim in pertinent part. (Emphasis added)

So, a tax having clearly been imposed on "taxable income," it follows that when taxable income is identified, income may be used to measure the tax due.

5. *Flora's* "Carefully Articulated"; the need to hold to it

The above, being "carefully articulated" as well as "complicated," is hopeful and significant. By holding to *Flora Supra.*, there is access to the security provided by the Constitution,

statutes, regulations, and precedent, no matter that IRS wishes to use power it usurps by misinterpretation and duress.

Let's think for a moment of the image of the plane flying into the World Trade Center Tower. It was so shocking, so unimaginable, that our dreams replayed it to us over and over. The image frayed our sleep, made us tense and weary. We all saw the horror.

For people who are put out of business by IRS, there is a similarity. Their business is the tower they have proudly built. The plane is a familiar sight, it is their government, it is good, until it flies into their tower, and destroys it, then it is unimaginable, a horror, but a private one that cannot be shown vividly on national television. And, there's no grief counseling, no Red Cross. In fact, the opposite is true, they are told they are not victims, but criminals, "You should have paid your taxes," even if they did. The finality has a bleak, prison clang to it. Isolation replaces sociability. No longer are they secure and happy. They and their countrymen are suddenly at odds, like Palestinians and Israelis. This is a disaster.

Flora, Supra., and all it represents, is the security from it.

5. Denial of rehearing was problematic for several reasons

> First, the Tenth Circuit had adopted the thinking of IRS:
> "On appeal the IRS states the only issue to be decided by this court is simply whether the federal income tax laws apply to Ms. Kline. The implication of that statement is that Ms. Kline is what was once designated by the IRS as an 'illegal tax protestor.' [1] App. 17.
>
> Second, the footnote to above said:
> ...Prior to the Act, the IRS defined a "tax protestor" as an individual who advocates and/or uses a tax protest scheme. A tax protest scheme was further defined as any scheme without basis in law... App. 17.

What made these two things entirely problematic, was that Kline had based her objection to the IRS proof of claim on legal grounds: statutory definitions, the Constitution, case law, statutory construction law, Supreme Court rulings.

Third, in Petition for Rehearing, Kline noted that "items" of income are listed in 26 USC §61 and that "from whatever source

derived", contains the legal term, "source". To show how a word with a meaning given it by Congress could be confusing, she noted 26 USC §7701(a)(1) defining "person" to include corporations, which makes Wal*Mart legally a person, and 26 USC §5845(a) defining "firearm" in these sections not to include most rifles and handguns, but to include poison gas, silencers, land mines. So, 26 USC §5841, "The Secretary shall maintain a central registry of all firearms in the United States..." doesn't mean most rifles and handguns, but does mean poison gas, silencers, land mines, even though it says "all". Similarly, when 26 USC §61 defines gross income to mean, "all income from whatever source derived", it seems all encompassing, but income from "sources" within the U.S. is explained by §861; and "determination" of sources of income is explained by §861 and following and regulations.

> Sec. 1.861-1. Income from sources within the United States. (a) Categories of Income. Part 1, subchapter N, chapter 1 of the Code, and the regulations thereunder *determine the sources of income for purposes of the income tax.*

26 CFR §1.861-1. Emphasis added.

After pleading pages of the careful articulation and complexity of §861 and following and regulations, Kline cited, "[B]y the previous ruling [Brushaber] it was settled that the Sixteenth Amendment conferred no new power of taxation..." *Stanton v. Baltic Mining Co.,* 240 US. 103, (1916), which meant that for seventy-five years the Supreme Court had not recognized that the sixteenth amendment authorizes a direct non-apportioned tax upon United States citizens. This was a fourth problem, given that IRS had quoted the Tenth Circuit saying the opposite in *Collins, supra.*

But, rehearing was denied, App. 20.

The Court therefore problematically appeared to affirm that she was a tax protestor, had a tax protest scheme without basis in law, that tax laws applying to her was indistinguishable from her, or an activity of hers, being made subject to a tax, App. 19, and that "taxable income" and "sources" were irrelevant, with the apparent result that the tax could be directly on her money.

The commonality among the problems is that Kline relies on the IRC, much as she relies on traffic law and stop signs, whether she is a passenger, walking or driving, she believes the IRC applies to her. She relies on the IRC to mean what it says, to include that those who are liable for or subject to a tax, that is,

"taxpayers" as defined, are required to file a return. Pertinent to this specificity, Norman J. Singer says,

> Statutory definitions of words used elsewhere in the same statute furnish official and authoritative evidence of legislative intent and meaning, and are usually given controlling effect.

Singer, Norman J., *Statutes and Statutory Construction,* Sixth Edition, page 624, § 27:2 Definitions.

Cases he cites in support, are, *Walling v. Portland Terminal Co.,* 330 U.S.148, 67 S.Ct. 639, 9 L.Ed. 809 (1947); *Mandel Bros., Inc. v.FTC,* 254 F.2d 18 (7th Cir. 1958) cert. granted, 358 U.S. 812, 79 S.Ct. 54, 3 L.Ed.2d 55 (1958) and judgment rev'd in part on other grounds, 359 US. 385,79 S.Ct. 818, 3 L.Ed.2d 893 (1959).

Singer goes on to say,

> Such internal legislative construction is of the highest value and prevails over executive or administrative construction and other extrinsic aids... Where a definition clause is clear it should ordinarily control the meaning of words used in the remainder of the act because of its authoritative nature. But the courts are not bound to follow a statutory definition where obvious incongruities in the statute would thereby be created, or where one of the major purposes of the legislation would be defeated or destroyed.

Singer, Norman J., *Statutes and Statutory Construction.*

7. Supreme Court's responsibility to say what Statute means

In this case, the lower courts appear to believe that to follow the statutory definitions would defeat the major purpose of the legislation, and so have chosen to emphasize the statute dealing with filing tax returns, despite the fact that only those who meet certain statutory definitions are required to file tax returns.

On this type of choice, the Supreme Court has said,

> Deciding what competing values will or will not be sacrificed to achievement of particular objective is very essence of legislative choice, and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers statute's primary objective must be law.

Rodriguez v.U.S., 107 SCt.1391, 480 U.S.522, 94L.Ed.2d533 (1987)

The Supreme Court has said, the central tenet of interpretation is that statute is to be considered in all its parts when any one of them is being construed, *Lexecon Inc. v. Milberg Weiss Bershad Hynes and Lerach,* 118S.Ct.956, 523U.S.26, 140L.Ed.2d62 (1998)

Most hopefully, and significant, the Supreme Court has said it is the responsibility of the Supreme Court to say what statute means and once Court has spoken, it is duty of other courts to respect that understanding of governing rule of law. *Rivers v. Roadway Exp.Inc.,* 114 S.Ct.1510, 11 U.S.298, 128 L.Ed.2d 274 (1993), concurring opinion *Landgraf v. USI Film Products,* 114 S.Ct. 1522, 511 U.S. 244, 128 L.Ed.2d 229 (1993), on remand *Harvis v. Roadway Exp, Inc.,* 51 F.3d 272, appeal after remand 111 F.3d 131, certiorari denied 118 S.Ct. 163, 139 L.Ed.2d 107 (1995).

The above being precedent, Kline is perplexed by the lower courts ignoring *Flora, Supra.* Surely they would have told her how she misunderstood *Flora,* if that had been the case. When they didn't, did it actually validate that the IRC protects those the IRS abuses, protection provided by law in that a person may stop volunteering to assess and pay; did it validate that money/income is not a legitimate subject of taxation, and cannot be taxed directly.

Most significantly, did it validate the Supreme Court saying in *Flora, supra.,* that our tax laws are, "a carefully articulated and quite complicated structure." From 26 USC §1, imposing a tax on "taxable income", distinguished from money by §63, defining taxable income as gross income minus allowable deductions; and §61 saying gross income means all income from whatever source derived, which sounds like the Sixteenth Amendment and as if Congress made a tax on our money legal, except the list of items in §61, which looks like "sources", is clearly designated as, "items".

A great number of Americans desire the validation. But it is the responsibility of the Supreme Court to say.

8. Sources of income are not explained until §861

Sources of income are not explained until §861. Its regulations, which by law, that is 26 USC §7805, are the official notice of what the law requires, and are binding, say,

> Part 1, subchapter N, chapter 1 of the Code, and the regulations thereunder *determine the sources of income for purposes of the income tax.*

26 CFR §1.861-1. Emphasis added.

26 CFR §1.861 goes on to say,

> The rules contained in this section apply in determining income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections.

26 CFR. §1.861-8(a)(1).

26 CFR §1.861 goes on to say,

> ...term 'statutory grouping' means the gross income from a specific source or activity which must first be determined in order to arrive at 'taxable income' from which specific source or activity under an operative section. (See paragraph (f)(1) of this section.)

26 CFR §1.861-8(a)(4).

26 CFR §1.861 goes on to say,

> The operative sections of the Code which require the determination of taxable income of the taxpayer from specific sources or activities and which gives rise to statutory groupings to which this section is applicable include the sections described below
>
> (i) Overall limitation to the foreign tax credit...

26 CFR §1.861-8(f)(1), see pages 12-13 for sections (i) to (M)

9. No operative sections, which require determination of taxable income from specific sources or activities, apply to citizens living and working only in the U.S.

No operative sections, which require determination of taxable income from specific sources or activities, apply to citizens living and working only in the US. (Fed. "possessions" as Guam etc., are "foreign" by law.) 26 CFR §1.861-8(f)(1) is the only list of sources in Part I, N, or its regulations, which the regulations themselves say, "determine the sources of income for purposes of the income tax."

Items of income deriving from these sources are made subject to the income tax:

> A nonresident alien individual engaged in trade or business within the United States... shall be taxable as provided in section 1...

26 USC. §871(b)(1).

> A foreign corporation engaged in trade or business within the United States... shall be taxable as provided in section 11 ...

26 U S.C. §882(a)(1).

There is no "shall be taxable" phrase, nor any "operative section" describing an activity in which a U.S. citizen living and working exclusively within the states receives income from within the states. The regulations under §861 make it clear that the "items" of income must derive from a taxable source or activity described in an "operative section" in order to be taxable.

10. This matches Supreme Court saying our tax system is, "carefully articulated and quite complicated structure"

So far, this matches the Supreme Court saying our tax system is, "a carefully articulated and quite complicated structure", Flo*ra, supra.* Further, clarifying precedent says,

> It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of legislature to reach.

McCullough v. *Com. Of Virginia,* 172 U5.102 (1898).

11. The Constitution, Art. I, §8, puts international commerce under federal jurisdiction; Art. IV, §3, gives Congress control of federal possessions.

Congress' "power to lay and collect taxes" applies only to matters otherwise under federal jurisdiction. The Constitution, Art. I, §8, puts international commerce under federal jurisdiction; Art. IV, §3 gives Congress control of federal possessions. So, the Constitutional power to tax and the Constitutional clauses giving Congress jurisdiction over international commerce and commerce within federal possessions creates the power to tax income from international commerce and federal possessions.

The Supreme Court in 1918, in a case concerned with income tax act of 1913 and how it applied to domestic corporation in business of buying in states and selling in foreign

countries, where corporation said the tax in this case violated provision of the Constitution which forbids federal government from taxing exports from any state, said:

> [T]he act obviously could not impose a tax forbidden by the Constitution... The Constitution broadly empowers Congress not only to 'lay and collect taxes, duties, imposts, and excises,' but also... to regulate commerce with foreign nations. So, if the prohibitory clause [that forbidding taxes on exports from states] invoked by the plaintiff be not in the way, Congress undoubtedly has power to lay and collect such a tax as is here in question.

William E. Peck & Co. v. Lowe, 247 US. 165 (1918).

i.e. If not for question of whether this taxed state exports, income would be taxable.

12. If government has no jurisdiction to regulate or forbid an activity, then it has no jurisdiction to tax that activity.

Underlying the prohibition against taxing state exports, is the concept, "the power to tax is the power to destroy," meaning the ability to tax something gives the ability to regulate or forbid it. Conversely, it means that if government has no jurisdiction to regulate or forbid an activity, then it has no jurisdiction to tax that activity, and numerous Supreme Court cases deal with this.

> [N]o state has the right to lay a tax on interstate commerce in any form... and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to congress. This is the result of so many recent cases that citation is hardly necessary

Leloup v. Port of Mobile, 127 US. 640 (1888).

The Court, in stating the restrictions on what a state can tax, makes its logic clear: taxing interstate commerce is a burden on interstate commerce and amounts to regulation of it. At the same time, while Congress may regulate interstate commerce and international commerce, the Court says it has no jurisdiction over intrastate commerce (entirely within one state):

> No interference by Congress with the business of citizens transacted within a state is warranted by the

> Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature.

License Tax Cases, 72 US. 462 (1866).

In Kline's case, when she was trying to get approval for payments corresponding to her sporadic real estate commissions, an IRS agent said no, she should get a different job, one where she could pay regularly. When IRS subsequently put her out of business, it effectively regulated the type of work she could do.

13. The first interest of all of the people

> In the footnote p.169, *Flora, Supra.,* this Court quoted, The first interest of all of the people is, of course - that the Government continue to function, and to do this it must have the means of prompt collection of the necessary supplies to keep it going, that is taxes...[T]he tax as assessed had to be paid...

Flora, supra., Treas. Dept. Press Release, July 16,1924.

Putting someone out of business, is counterproductive to the first interest, since someone who is out of business does not have the money to pay for shelter, or food, much less to use as a measure for taxes, or to pay taxes. Foreclosure, poor health, etc. ensue.

Clearly at this time, when we are facing threats to our nation, we all want the Government to continue to function. But, the fact remains, says *Flora,* footnote, p.177,

> If the government is forced to use these remedies [distraint] on a large scale, it will affect adversely taxpayers' willingness to perform under our voluntary assessment system.

Riordan, *Must You Pay Full Tax Assessment Before Suing in District Court,* 8 J. Tax. 179, 181.

In relation to this, Kline was paying her taxes, even sending IRS Christmas cards because she was so happy to be back in her country, having been an alien in London, England for several years, where it was illegal to work.

But when IRS began calling and threatening to take her home unless she paid 1984, (which she had repeatedly sent IRS proof of already having paid), telling her she should get a different job, one where she could pay regularly - when being a Realtor and getting commissions was the best work she had in her life - and finally putting her out of business, her life was as painful as it had

been in London when it had been illegal to work and she had a small son to feed. At the time the levies took place, Kline was trying to reunite with her son, but the stress from the levies, added to the inherent stress, made that impossible.

14. Our system of government involves checks and balances.

If IRS knew Americans had the right to stop voluntarily assessing, would IRS be like Realtors, valuing taxpayers as if they were buyers.

As Americans, we want to know our rights so that we may happily pay our taxes, if we self assess, or, if the is mean and hurts us, then we may not self assess, and safely go on with our lives.

Our system of government involves checks and balances. The President hasn't total power, nor has Congress, since the President can veto. If an unconstitutional law makes it through both, there is still this Supreme Court, to make things right.

We would not consider changing our system of checks and balances in these areas, yet we have hesitated to empower checks and balances in "our system of taxation... based upon voluntary assessment and payment," *Flora, supra.*

Now, more than ever, for the sake of solidarity and unity, Americans and lower courts need to hear the Supreme Court say what the tax statutes and regulations mean.

A great number of Americans would join me in this, if this were a petition in the many-names sense of the word. Few of us would be legally trained, but all of us would be fervent in wanting you to understand our need to have these questions resolved.

CONCLUSION

For these reasons, Petitioner respectfully prays for this Court to issue its writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

Karen Marie Kline, pro se
729 W. Manhattan #3
Santa Fe, New Mexico 87501
(505) 820-6656
Petitioner, pro se

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In Re: KAREN MARIE KLINE, Debtor.

No. 11-97-13074 MS
(Filed March 24, 1999)

ORDER DENYING DEBTOR'S OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE WITHOUT PREJUDICE

THIS MATTER came before the Court on the Debtor's Objection to Claim ("Objection"). The Debtor objects to the Proof of Claim filed by the Internal Revenue Service ("IRS") on grounds that she is not a "taxpayer" as defined in the Internal Revenue Code, and is neither "liable for" nor "subject to" any internal revenue tax. After having a hearing on the merits, considering Debtor's objection, and being otherwise fully informed, the Court finds:

1. No evidence has been presented upon which the Debtor's objection can be sustained.

2. All individuals earning gross income equal to or in excess of the exemption amount are required to file tax returns. *See* I.R.C. § 6012 (individual who is head of household is required to file tax return unless individual has gross income less than exemption amount plus the standard deduction).

3. The Debtor testified that she earned income during the years in question, but introduced no testimony concerning the amount of income earned for those years.

4. The Debtor did not file tax returns for the years in question.

5. IRS's proof of claim is *prima facie* evidence of the amount of the claim. Federal R. Bankruptcy P. 3001(f).

6. Debtor presented no evidence to refute IRS's estimate of tax due for the years in question.

7. IRS is entitled to an unsecured priority claim in the amount of $52.300.98 and an unsecured non-priority claim in the amount of $14,240.00, absent evidence that the Debtor has filed tax returns showing that there is a different amount of tax due, or no tax due.

The Court therefore concludes that the Debtor's Objection to Claim should be denied. and IRS's claim set at $66,540.98, comprised of $52,300.98 as an unsecured priority claim and $14,240.00 as an unsecured non-priority claim.

IT IS HEREBY ORDERED that Debtor's Objection to Claim is denied without prejudice to allow Debtor to object to IRS's claim after filing tax returns for the years in question.

/s/ MARK B. McFEELEY
MARK B. McFEELEY
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: KAREN KLINE,
Debtor,

No. 11-97-13074 MS
(Filed January 31, 2000)

ORDER DENYING MOTION FOR THE COURT TO AMEND ITS FINDINGS AND AMEND ITS .JUDGMENT/ORDER ACCORDINGLY OR IN THE ALTERNATIVE TO SET ASIDE JUDGMENT/ORDER

THIS MATTER came before the Court on the Motion for The Court to Amend its Findings and Amend its Judgment/Order Accordingly or in the Alternative to Set Aside Judgment/Order ("Motion") filed by the Debtor, Karen Kline. The Motion requests the Court to reconsider its Order Denying Debtor's Objection to Claim of Internal Revenue Service Without Prejudice wherein the Court determined that the proof of claim filed by the Internal Revenue Service ("IRS") was *prima facie* evidence of the amount of the IRS's claim, and set the IRS's claim at $66,540.981 with leave to allow the Debtor to object to such amount after filing tax returns for the years in question.

After reviewing the Motion and being otherwise fully informed, the Court finds that the Debtor raises no issues in the Motion that were not raised at the final hearing. Therefore, there are no grounds upon which the Judgment/Order should be amended or set aside.

WHEREFORE, IT IS HEREBY ORDERED, that the Debtor's Motion for the Court to Amend its Findings and Amend its Judgment/Order Accordingly or in the Alternative to Set Aside Judgment/Order is DENIED.

/s/ MARK B. McFEELEY
MARK B. McFEELEY
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KAREN MARIE KLINE,
Plaintiff,

VS.

No. CIV 00-0177 JC/LCS
(Filed April 4, 2000)

INTERNAL REVENUE SERVICE,
Defendant.

ORDER

THIS MATTER came before the Court for a Status Conference on April 4, 2000. Plaintiff appeared *pro se.* Defendant was represented by Manuel Lopez. Plaintiff has a motion pending before the United States Bankruptcy Judge regarding whether a certain document was considered in rendering the decision. The Court, having considered the record and the presentations at the hearing, finds that this matter should be stayed until the United States Bankruptcy Judge rules on Plaintiff's motion. Plaintiff shall notify the Court in writing when the United States Bankruptcy Judge issues his ruling.

Plaintiff shall thereafter proceed in accordance with the Federal Rules of Procedure. Plaintiff and counsel for Defendant shall confer and submit a stipulated order setting the briefing schedule.

In no event shall the stay extend beyond July 5, 2000.

IT IS SO ORDERED.

/s/ LESLIE C. SMITH
LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In Re:
KAREN MARIE KLINE, Debtor

No. 11-97-13074 MS
(Filed May 17, 2000)

ORDER SETTING ASIDE ORDER DENYING UNOPPOSED MOTION BY DEBTOR KAREN MARIE KLINE TO CLARIFY WHETHER DEBTOR'S MEMORANDUM OF LAW REGARDING INCOME TAXES WAS BEFORE THE COURT WHEN THE COURT DENIED DEBTOR'S MOTION FOR THE COURT TO AMEND ITS FINDINGS AND AMEND ITS JUDGMENT/ORDER ACCORDINGLY

THIS MATTER came before the Court on the Motion to Reconsider Order Dated April 24, 2000 ("Motion to Reconsider") filed by Karen Marie Kline, *pro se.* Having reviewed the Motion to Reconsider and the attached exhibit, and being otherwise fully informed, the Court FINDS:

1. Karen Marie Kline appealed the Bankruptcy Court's Order Denying Motion for the Court to Amend its Findings and Amend its Judgment/Order Accordingly or in the Alternative to Set Aside Judgment/Order to the District Court.

2. After filing her notice of appeal, Karen Marie Kline filed an Unopposed Motion by Debtor Karen Marie Kline to Clarify Whether Debtor's Memorandum of Law Regarding Income Taxes Was Before the Court When the Court Denied Debtor's Motion for the Court to Amend its Findings and Amend its Judgment/ Order Accordingly ("Motion to Clarify").

3. The Court entered its Order Denying Unopposed Motion by Debtor Karen Marie Kline to Clarify Whether Debtor's Memorandum of Law Regarding Income Taxes Was Before the Court When the Court Denied Debtor's Motion for The Court to Amend its Findings and Amend its Judgment/Order Accordingly on April 24, 2000.

4. Attached to Ms. Kline's Motion to Reconsider is a copy of an order from the United States District Court staying the appeal until the Bankruptcy Court issues a ruling on the Motion to Clarify ("District Court Order").

5. The District Court Order effectively reinstated the Bankruptcy Court's jurisdiction to consider the Motion to Clarify.

WHEREFORE, IT IS HEREBY ORDERED that the Order Denying Unopposed Motion by Debtor Karen Marie Kline to Clarify Whether Debtor's Memorandum of Law Regarding Income Taxes Was Before the Court When the Court Denied Debtor's Motion for the Court to Amend its Findings, and Amend its Judgment/Order Accordingly is set aside.

/s/ MARK B. McFEELEY
MARK B. McFEELEY
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In Re:
KAREN MARIE KLINE, Debtor.

No. 11-97-13074 MS
(Filed May 17, 2000)

ORDER GRANTING MOTION TO RECONSIDER ORDER DATED APRIL 24. 2000

THIS MATTER came before the Court on the Motion to Reconsider Order Dated April 24, 2000 ("Motion to Reconsider") filed by Karen Marie Kline. After reviewing the Motion to Reconsider and the bankruptcy case file, and being otherwise fully informed, the Court finds:

1. This Court previously entered an Order Denying Unopposed Motion by Debtor Karen Marie Kline to Clarify Whether Debtor's Memorandum of Law Regarding Income Taxes Was Before the Court When the Court Denied Debtor's Motion for The Court to Amend its Findings and Amend its Judgment/Order Accordingly ("Order Denying Motion to Clarify") on April 24, 2000.

2. On or about March 2, 2000, Karen Kline filed an Unopposed Motion to Clarify ("Motion to Clarify) which sought a determination of whether a Memorandum of Law Regarding Income Taxes ("Memorandum") was before the Court when it issued its Order Denying Motion for the Court to Amend its Findings and Amend its Judgment/Order Accordingly, or in the Alternative to Set Aside Judgment/ Order ("Order"). If not, the Motion to Clarify requests the Court now to consider the Memorandum before issuing its ruling.

3. The Court based its previous denial of the Motion to Clarify on grounds that it no longer had jurisdiction over the issues raised in the Motion to Clarify due to Ms. Kline's appeal to the District Court of the Bankruptcy Court's Order.

4. Attached to the Motion to Reconsider was a copy of an Order from the District Court staying the appeal until the Bankruptcy Court issues a ruling on the Motion to Clarify.

5. This Court then set aside the Order Denying Motion to Clarify. *See* Order Setting Aside Order Denying Unopposed Motion by Debtor Karen Marie Kline to Clarify Whether Debtor's

Memorandum of Law Regarding Income Taxes was Before the Court when the Court Denied Debtor's Motion for the Court to Amend its Findings and Amend its Judgment/ Order Accordingly.

6. It appears from a review of the Court docket sheet and the bankruptcy file that the Memorandum was not on file with the Court at the time the Court issued its Order, but that an endorsed copy of the Memorandum was later brought to the clerk and included in the bankruptcy file.

WHEREFORE, IT IS HEREBY ORDERED that the Motion for the Court to Reconsider Order Dated April 24, 2000 is **GRANTED.**

/s/ MARK B. McFEELEY
MARK B. McFEELEY
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In Re:
KAREN MARIE KLINE, No. 11-97-13074 MS
Debtor. (Filed May 17, 2000)

SECOND ORDER DENYING UNOPPOSED MOTION TO CLARIFY

Having entered an Order Setting Aside Order Denying Unopposed Motion by Debtor Karen Marie Kline to Clarify Whether Debtor's Memorandum of Law Regarding Income Taxes was Before the Court When the Court Denied Debtor's Motion for the Court to Amend its Findings and Amend its Judgment/Order Accordingly, and having entered an Order Granting Motion to Reconsider Order Dated April 24, 2000, the Court will now reconsider the Unopposed Motion to Clarify ("Motion to Clarify"), taking into account Debtor's Memorandum of Law Regarding Income Taxes ("Memorandum").

Now having reviewed the Memorandum, and being otherwise fully informed, the Court finds that the Memorandum raises no issues which were not raised at the final hearing on the Debtor's objection to the claim of the Internal Revenue Service; therefore, there are no grounds upon which the Order Denying Debtor's Objection to Claim of Internal Revenue Service Without Prejudice can be amended or set aside. The Motion to Clarify should therefore be denied. The Order Denying Motion for the Court to Amend its Findings and Amend its Judgment/Order Accordingly, or in the Alternative to Set Aside Judgment/Order stands as previously entered.

WHEREFORE, the Unopposed Motion to Clarify is hereby DENIED.

/s/ MARK B. McFEELEY
MARK B. McFEELEY
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE:
KAREN MARIE KLINE, No. 11-97-13074-MS
Debtor,

KAREN KLINE, No. CIV 00-0177 JC/LCS
Appellant, (Filed January 26, 2001)
vs.
INTERNAL REVENUE SERVICE,
Appellee.

MAGISTRATE .JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court upon Appellant's Notice of Appeal. Appellant appeals the Bankruptcy Court's Order Denying Motion for Reconsideration of January 31, 2000. Having reviewed the submissions of the parties and the relevant law, this Court exercises jurisdiction pursuant to 28 U.S.C. § 158, and recommends the Bankruptcy Court be AFFIRMED.

I. Facts and Procedural Background

Appellant filed her petition for Chapter 11 bankruptcy on May 27, 1997. Appellee filed a proof of claim reflecting estimated tax liabilities for the years 1987, and 1993 through 1996. Appellant filed an Objection to the Proof of Claim, on the grounds that she is not a taxpayer as defined by the Internal Revenue Code, and is neither liable for nor subject to any income tax. Appellee responded to the Objection, the Court conducted a preliminary hearing on the Objection, and scheduled the matter for final hearing.

On March 3, 1999, the Bankruptcy Court held the final hearing on Appellant's Objection to Appellee's Proof of Claim. At the hearing, Appellant testified that she earned income during the years covered by the proof of claim, (tr. 16-18), but did not file tax returns during those same years. (Tr. 18-19.) On March 24,1999, the Bankruptcy Court entered an Order Denying Debtor's Objection to Claims of Internal Revenue Service Without Prejudice. Specifically, the Bankruptcy Court found that no evidence had been presented on which Appellant's objection could be sustained and set the amount of Appellee's claims at $66,540.98, consisting of

$52,300.98 in an unsecured priority claim and $14,240.00 as an unsecured non-priority claim. The Bankruptcy Court explicitly granted Appellant the opportunity to file returns for the years in question, showing that her income was lower that the estimated amounts. The record on appeal contains no indication that Appellant ever filed tax returns for the years in question, or submitted any other evidence tending to show that she was not required to file tax returns.

On April 2, 1999, Appellant filed a Motion for the Court to Amend its Findings and Amend its Judgment/ Order Accordingly or in the Alternative to Set Aside Judgment/ Order. On January 31, 2000, the Bankruptcy Court denied this Motion. Appellant filed her Notice of Appeal on February 10, 2000.

On March 2, 2000, Appellant filed an unopposed Motion to Clarify Whether Debtor's Memorandum of Law Regarding Income Taxes was Before the Court When the Court Denied Debtor's Motion for the Court to Amend Its Findings and Amend Its Judgment/Order Accordingly or in the Alternative to Set Aside Judgment/ Order. On April 24, 2000, the Bankruptcy Court denied this Motion, reasoning that it was without jurisdiction due to Appellant's pending appeal to this Court. This Court stayed the appeal in order to allow the Bankruptcy Court to rule on the Motion to Clarify.

On May 17, 2000, the Bankruptcy Court set aside its Order denying the Motion to Clarify for want of jurisdiction and granted Appellant's Motion for Reconsideration because the Memorandum of Law Regarding Income Taxes was not in the file at the time the ruling was issued, but an endorsed copy was later brought to the clerk and included in the record. On the same day, the Bankruptcy Court issued a Second Order Denying Unopposed Motion to Clarify, taking into account Appellant's Memorandum of Law Regarding Income Taxes and findings that the memorandum raised no issues which were not raised at the final hearing on the Objection and that there were no grounds upon which the order Denying Debtor's Objection to Claim of Internal Revenue Service without Prejudice could be amended or set aside. The Bankruptcy Court therefore denied that Motion to Clarify. The Order Denying Motion for the Court to Amend its Findings and Amend its Judgment/Order Accordingly or in the Alternative to Set Aside Judgment/Order, filed January 31, 2000, was a final order for purposes of appeal. It is from this order that Appellant appeals.

II. Standard of Review

When reviewing a decision of the Bankruptcy Court, this Court functions as an appellate court and is authorized to affirm, reverse or modify the Bankruptcy Court's ruling or remand the case for further proceedings. *See Bartmann* v. *Maverick Tube Corp.*, 853 F. 2d 1540,1543 (10th Cir. 1988). This Court reviews legal determinations on a *de novo* basis and factual findings under a clearly erroneous standard. *In re Hedged Investments Associates, Inc.*, 48 F. 3d 470, 472 (10th Cir. 1995).

III. Discussion

Appellant argues that Appellee failed to show that Appellant was liable for or subject to any Internal Revenue tax. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. *See* 26 U.S.C. § 1. Section 63 defines "taxable income" as gross income minus allowable deductions. 26 U.S.C. § 63. Section 61 states that "gross income means all income from whatever source derived." 26 U.S.C. § 61. Sections 6001 and 6011 provide that a person must keep records and file a tax return for any tax for which he or she is liable. *See* 26 U.S.C. §§ 6001; 6011. Finally, Section 6012 provides that every individual having gross income that equals or exceeds the exemption amount in a taxable year shall file an income tax return. *See* 26 U.S.C. § 6012. Failure to file an income tax return subjects an individual to criminal penalty. *See* 26 U.S.C. § 7203; *United States* v. *Pottorf*, 769 F. Supp. 1176, 1183 (D. Kan.1991).

It is undisputed that Appellee timely and properly filed a proof of claim in the bankruptcy case. A properly filed proof of claim is prima facie evidence of the validity and amount of the claim FED. R. BANK. P. 3001(f). While the Supreme Court has recently held that the Bankruptcy Code does not alter the burden on a tax claim, *see Raleigh* v. *Illinois Dept. of Revenue*, 530 U.S. 1951 (2000), the burden of persuasion has long rested with the Government. *See In re Harrison*, 987 F. 2d 677, 680 (10th Cir. 1993). Appellee properly filed a proof of claim setting out Plaintiff's estimated tax liability for the years in question. At the March 3, 1999 hearing, Appellant testified that she was employed as a real estate agent and received rental income during the years in question, but that she did not file income tax returns. (Tr. at 16-19.) Appellant offered absolutely no evidence to refute Appellee the proof of claim. Indeed, the Bankruptcy Court allowed Appellant the opportunity to object to Appellee's claim after filing tax returns for

the years in question. Appellant failed to file such returns, or offer any other proof in sup-port of her contention that she was not subject to the requirements of § 6012. Under these circumstances, the Bankruptcy Court correctly determined Appellant's tax liability.

Appellant argues that the Bankruptcy Court failed to consider 26 U.S.C. § 6012 *in pari materia.* Specifically, she argues that the Bankruptcy Court erred in omitting the words "for the taxable year" from its Order. A review of the Order establishes that the Bankruptcy Court considered § 6012 with respect to 1987 and 1993 -1996. The Bankruptcy Court heard testimony that Appellant earned income for the years covered by the proof of claim, yet she failed to file tax returns for those years. The Bankruptcy Court denied Appellant's objection without prejudice to her ability to file tax returns for the years in question, which could set her actual income levels for those years. Appellant failed to file such returns. A review of the record established that the Bankruptcy Court properly construed Section 6012.

Appellant contends that the proof of claim is fraudulent and uses "inflated and usury" figures. This argument is not supported by the record. Appellant presented absolutely no evidence that the estimated figures on the proof of claim were erroneous. Although the Bankruptcy Court denied the objection without prejudice, Appellant failed present any evidence to rebut Appellee's showing. Appellant's argument wholly unsupported by the record.

Appellant contends that Appellee is not her creditor because it has failed to establish that she is liable for any internal revenue tax. Appellee properly filed a proof of claim setting out Plaintiffs estimated tax liability. Appellant testified that she had income during that period, yet failed to file income tax returns. Appellant failed to present any evidence to the Bankruptcy Court that would tend to rebut Appellee's proof of claim Thus, the Bankruptcy Court properly found that Appellee was Appellant's creditor.

Appellant contends that the Bankruptcy Court erred in finding that she is a taxpayer. The Internal Revenue Code defines taxpayer "any person subject to any internal revenue tax." 26 U.S.C. § 7701(a)(14). Appellant testified that she received income during the years in question and offered no (sic) in support of her contention that she was not subject to the requirements of Section 6012. Therefore, the Bankruptcy Court correctly determined that Appellant's (sic) was a taxpayer.

Finally, Appellant argues that the tax code should be construed against Appellee and in her favor. It is true that tax statutes must be construed liberally against the government. *Gould* v. *Gould*, 245 U.S. 151, 153 (1917). In this case, the Bankruptcy Court construed the applicable statutes in Appellant's favor by denying her objection without prejudice to her ability to file tax returns and challenge Appellee's estimated tax liability. Appellant's failure to present any facts in support of her position did not permit the Bankruptcy Court to rule in her favor. The Bankruptcy Court correctly held that, on the evidence presented, Appellee's proof of claim was valid until such time as Appellant filed tax returns.

RECOMMENDED DISPOSITION

The Bankruptcy Court's Order Denying Motion for Reconsideration of January 31, 2000 should be affirmed. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(I)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may file with the Clerk of the District Court written objections to such proposed findings and recommendations. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

/s/ LESLIE C. SMITH
LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE:
KAREN MARIE KLINE, No. 11-97-13074-MS
Debtor

KAREN KLINE, No. CIV 00-0177 JC/LCS
Appellant, (Filed February 15, 2001)

vs.

INTERNAL REVENUE SERVICE,
Appellee.

ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS

THIS MATTER comes before the Court on Plaintiff's Objections to the Magistrate Judge's Proposed Findings and Recommended Disposition, filed January 26, 2001. The Plaintiff filed objections within the ten-day period specified by 28 U.S.C. § 636(b)(1). Having conducted a *de novo* review of the record, the Court finds that the objections are not well-taken and should be overruled. WHEREFORE,

IT IS ORDERED that Plaintiffs Objections to Magistrate Judge's Proposed Findings and Recommended Disposition, filed February 5, 2001, are OVERRULED.

IT IS FURTHER ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, filed January 26,2001, are ADOPTED by the Court.

IT IS FINALLY ORDERED that this action is DISMISSED.

/s/ JOHN EDWARD CONWAY
JOHN EDWARD CONWAY
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re:
KAREN MARIE KLINE,
Debtor.

No. 01-2125
(D.C. No. CIV-00-177-JC/LCS)
(D. N.M.)
(Filed February 8, 2002)

KAREN MARIE KLINE,
Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE,
United States of America,
Defendant-Appellee.

ORDER AND JUDGMENT*
Before LUCERO, PORFILIO, and ANDERSON,
Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2);10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Debtor Karen Marie Kline appeals the district court's order affirming the bankruptcy court's approval of the Internal Revenue Service's (IRS) proof of claim, reflecting the estimated tax liability of Ms. Kline's bankruptcy estate. We affirm.

I. Background

Ms. Kline filed her petition for Chapter 11 Bankruptcy on May 27, 1997. The IRS filed a timely proof of claim with the bankruptcy court in the amount of $66,540.98, reflecting estimate tax liabilities for the tax years 1987, and 1993 through 1996. After receiving written objections and conducting a hearing on the matter, the bankruptcy court denied Ms. Kline's objection to the IRS claim without prejudice. Ms. Kline subsequently filed a "Memorandum of Law Regarding Income Taxes," and a motion to alter, amend or set aside the court's judgment. The bankruptcy

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

court denied that motion on January 31, 2000, finding Ms. Kline had failed to refute the IRS's prima facie evidence of its estimate of tax due for the years in question.

Ms. Kline then appealed to federal district court. Upon review, the magistrate judge found that although Ms. Kline testified that she received income during 1987 and 1993 through 1996 without filing tax returns, she offered no evidence to refute the IRS's proof of claim. After careful consideration of Ms. Kline's arguments, the magistrate judge concluded

> the Bankruptcy Court construed the applicable statutes in Appellant's favor by denying her objection without prejudice to her ability to file tax returns and challenge Appellee's estimated tax liability. Appellant's failure to present any facts in support of her position did not permit the Bankruptcy Court to rule in her favor. The Bankruptcy Court correctly held that, on the evidence presented, Appellee's proof of claim was valid until such time as Appellant filed tax returns.

R. Vol. 1, Doc. 18 at 6. The district court overruled Ms. Kline's objections to the magistrate judge's proposed findings, and adopted the recommended disposition affirming the bankruptcy court.

On appeal, the IRS states the only issue to be decided by this court is simply whether the federal income tax laws apply to Ms. Kline. The implication of that statement is that Ms. Kline is what was once designated by the IRS as an "illegal tax protestor."[1] Conversely, Ms. Kline works earnestly to avoid that designation, framing the issues on appeal in terms of statutory construction,

[1] Section 3707 of the IRS Restructuring and Reform Act of 1998 now prohibits the IRS from designating taxpayers internally as "illegal tax protestors" and requires the removal of existing designations after January 1, 1999. *See* Internal Revenue Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 778, § 3707 (1998). Prior to that Act, the IRS defined a "tax protestor" as any individual who advocates and/or uses a tax protest scheme. A tax protest scheme was further defined as any scheme without basis in law or fact for the ostensible purpose of expressing dissatisfaction with the substance, form, or administration of the tax laws be either interfering with tax administration or attempting to illegally avoid or reduce tax liabilities. More generally, a tax protestor has been defined as one who is characterized as such either by himself or by the courts, or whose return is characterized as a protest return. *See* Ronald I. Mirvis, Annotation, *Tax Protestor's Failure to Submit, or Submission of Erroneous or Incomplete Federal Income Tax Return...*, 50 A.L.R. Fed. 158, 160 n.2. (1982).

IRS abuse, and burdens of proof. Both parties have requested sanctions from this court.

II. Discussion

"We review de novo conclusions of law by the district court and the bankruptcy court." *Phillips* v. *White (In re White),* 25 F.3d 931, 933 (10th Cir. 1994). "The bankruptcy court's findings of fact are not to be set aside unless clearly erroneous." *Id.*

The only real difficulty with this appeal and the ensuing motions for sanctions is that while Ms. Kline asserts she is not. a "tax protestor" in the usual sense, many of her arguments flow with typical protestor rhetoric. She claims she is not a tax protestor, but is instead an IRS-abuse protestor. She acknowledges that the income tax is not voluntary, but argues that she was forced to deny being a taxpayer, and now refuses to file. She tends to recognize the validity of the Internal Revenue Code (IRC) in general, but continues to argue that the courts have yet to adequately prove to her that she is a taxpayer subject to the IRC's requirements. While refraining from an outright assertion that the federal income tax laws as written are an unconstitutional direct tax that must be apportioned, she nevertheless claims that the bankruptcy and district courts misapplied the language and structure of the code, thus converting the tax laws into an Unconstitutional direct income tax.

That final argument, Ms. Kline's primary argument on appeal, is articulated as follows: although section 1 of the IRC correctly imposes a tax on the "taxable income" of individuals, and although sections 6001 and 6011 require persons to keep records and file a return for any tax for which that individual is liable, Ms. Kline is not liable because "taxable income" is defined as gross income minus certain allowable deductions for a taxable year which are made by election of the taxpayer on the return. Had she filed a tax return, Ms. Kline argues, she would have made herself liable to pay a tax. Because she did not file a tax return or claim deductions, however, and because she denies being a "taxpayer" or having a "taxable year," she denies having taxable income and is therefore not liable. Related to this argument, Ms. Kline claims that she is not liable for any internal revenue tax because, without her filed returns, the government could only prove she had "income" and not "taxable income" subject to the obligation in section 1 of the IRC. *See* Aplt. Br. at 18-21; Reply Br. passim.

Both of these arguments are circular, and similar to other frivolous arguments that attempt through tautology to render the tax

laws ineffective. *See, e.g., May v. Comm'r,* 752 F.2d 1301, 1304 (8th Cir. 1985) (rejecting argument that IRS erred in determination of "income" when no definition of "income" is found in IRC); *Martin v. Comm'r,* 756 F.2d 38, 40 (6th Cir. 1985) (rejecting as "baseless" argument from a debtor who filed tax forms with no income information that he was technically not a taxpayer subject to IRC obligations).

In the present case, both the bankruptcy court and the federal district court correctly found these arguments, as well as Ms. Kline's other, more general claims regarding the constitutionality of the internal revenue laws, to be unpersuasive. The bankruptcy court explained how Ms. Kline was subject to the tax laws, and found that she had presented no evidence either to support her objections to the claim or to refute the IRS's income estimates for the years she had failed to file a return. That court charitably denied her objections without prejudice to allow her to file returns and provide some proof that those estimates were erroneous. In greater detail, the district court carefully described the relevant internal revenue code and bankruptcy code sections applicable to Ms. Kline, and affirmed the bankruptcy court's ruling. We have read the record in this appeal and we agree with the district court that the bankruptcy court's legal determinations and factual findings were not in error for substantially those reasons set forth in the magistrate judge's proposed findings and recommendation.

The remainder of Ms. Kline's arguments on appeal are without merit. Moreover, we urge her to exercise caution in presenting to a court or tribunal future arguments that, although articulated differently from the arguments we have consistently held to be frivolous, are independently baseless. Nevertheless, in this particular case we are not entirely convinced that there has been a "clear showing of bad faith which would require the imposition of damages upon appellant." *Autorama Corp.*v.*Stewart,* 802 F.2d 1284,1288 (10th Cir.1986) (quotation omitted). Therefore, the IRS's motion for sanctions pursuant to Fed.R.App.P.38 and 28U.S.C. §1912 is DENIED.

Ms. Kline's motions for sanctions dated August 23, 2001, are DENIED. All other open motions are DENIED, and the judgment of the United States District Court for the District of New Mexico is AFFIRMED.

Entered for the Court

Stephen H. Anderson
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In re: KAREN MARIE KLINE,
Debtor,
KAREN MARIE KLINE,
Plaintiff - Appellant,
v. No. 01-2125
INTERNAL REVENUE SERVICE,
United States of America,
Defendant - Appellee.

ORDER
Filed April 8. 2002

Before LUCERO, PORFILIO, and ANDERSON,
Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service as required by Fed. R. App. P. 35. As no member of the panel and no judge: in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER, Clerk of Court

/s/ by: Kathy Fabrizio
Deputy Clerk

Transcript, Page 3, and following:

THE COURT: We are here this morning in the Karen Kline case, 11-97-13074. This is the final hearing on the debtor's objection to the claim of the Internal Revenue Service. Ms. Kline appears pro se. Mr. Lucero appears for the Internal Revenue Service. Are you all ready to proceed?

MS. KLINE: Yes, sir.

MR. LUCERO: Yes, Your Honor.

THE COURT: All right. Has the Service filed a proof of claim, I take it?

MR. LUCERO: Yes, Your Honor, a proof of claim was filed that shows estimates filed for lack of filing for 87,93,94,95 –

THE COURT: 87,94,95,96?

MR. LUCERO: And 96.

THE COURT: And no returns have since been filed?

MR. LUCERO: No, your Honor.

THE COURT: Ms. Kline, are you ready to proceed?

MS. KLINE: Yes, Your Honor.

THE COURT: Is there a reason you haven't filed your tax returns?

MS. KLINE: There is a very good reason. I have thought long and hard about what to

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say and, with your permission, I would like to say how it is I came to be in bankruptcy and how it is that the IRS set the stage for this, if I may.

THE COURT: I'm not sure it's particularly relevant, but go ahead.

MS. KLINE: Briefly, in 1985 I paid my 1984 taxes and owed some money into 1985 which * wasn't yet due and IRS charged me penalty and interest in 1984. It is true I was $23.94 short due to not understanding self-employment tax, but I sent that in by April for 1986. In 1991 IRS levied me for 1984, which, under stress, I paid again.

* Line 7 should read, "1984 taxes and *IRS put the* money into 1985 which"

Next, IRS put excess money from the 1984 tax account into various later years, all of which had been zeroed out before the credits were added. When the credits were added, IRS made assessments in the same amounts so as to zero out. Then IRS removed the credits leaving the new assessments at amounts owing. I paid the amounts due on the previously zeroed-out year, and I gave copies of those to be evidence. Is that all right, sir? *

THE COURT: I don't know.

MS. KLINE: May I give you a copy?

LAW CLERK: He has it.

MS. KLINE: You have it?

* see App. 33-36

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THE COURT: Where does it come from?

MS. KLINE: It comes from, I believe, Phoenix, and the date it was printed is at the top.

THE COURT: Mr. Lucero, have you seen this?

MS. KLINE: I believe it's the one I sent to you, sir.

MR. LUCERO: Which one?

MS. KLINE: I believe I attached --

MR. LUCERO: I would just object on the basis of relevance, Your Honor. It has nothing to do with the 1987 taxes or the remaining taxes that are at issue here.

THE COURT: All right. Well, I will admit it subject to its being relevant.

MS. KLINE: Thank you, Your Honor. Because the years had been zeroed out, I tried to get back the interest and penalties that had been assessed. The most serious point at which the money was not returned and has not been returned, excuse me, was late 1994 when IRS was levying me for $4,579.75 which, according to IRS, was owing in penalties, interests and taxes. And I would simply mention that on Monday of this week ABC World News said that IRS failed its audit beginning* this year.

*This should read, "again"

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In any event, early in 94 when IRS had said $6,579.75 was owing, I had gotten a credit card from FSB and, on 2-16-94, had sent IRS $2,000 from the credit card, leaving the 4,579.75. And my plan provides for repaying FSB, which is now Regents Bank. What's important about that is that year I was making a lot less money than I had the previous year, so I got the credit card in order to keep the IRS satisfied.

In 1994 when IRS constantly called and threatened in violation of the New Mexico Statute 30-20-12, I repeatedly asked IRS to deduct the amounts I paid in the zeroed out years. These amounts, though small, would have allowed me to stay in business. IRS did not deduct these amounts, but instead took my mortgage payment out of the bank, which is all I had in October 17, 1994.

On or about November 21,1994, IRS took a full commission, which I had been waiting for many months, the commission from a home built by tenants of mine who had moved into it from my rental, leaving me without that income. From these tenants closing, I did not get any money because the IRS had taken it all, and I was unable to give back those tenants' deposits until later. Prior to this an IRS

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agent had driven out my tenant by telling her she was responsible for my taxes.

In this way, Your Honor, I was left destitute. When I called Social Services they said they couldn't help me. I could not borrow because I could not see how I would repay anyone if IRS behaved as it had been behaving and was behaving then. I felt, to borrow money under these circumstances, would be to steal it, since I could not count on having money when IRS assessed me for a zeroed-out year, put my tax payments into years not due and charged me penalties, and for years I had paid. If I had not stopped borrowing, I could not be in -- if I had

borrowed what I had no way of repaying, I would not have any equity to survive the stay and adequate protection hearings that were held.

During the time that the IRS was threatening me via the phone, I discovered, if I went out in my car after such a call, I invariably had a near accident. I would, for instance, turn into oncoming traffic without even seeing it. My feeling was, at that time, I could possibly kill an innocent person due to the extreme stress affecting my behavior.

I decided that what IRS was doing was

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wrong. I decided I would write letters to try to report* the IRS. I soon discovered that the media would not cover IRS abuse. At that time stories about people having problems with IRS were told in a way that the people were made to look like criminals. My objective became to change this, to draw attention to IRS abuse. I decided that I would work as hard to reform the IRS as I had worked as a realtor. I also decided that I would do this until I ran out of money or my property was foreclosed and that I would not worry about the threats of foreclosure around** property since they were basically IRS-imposed threats.

I decided and I consistently wrote that I was not worried because, when I ran out of money or my property was foreclosed, I would simply kill myself. I had three pennies on a railroad tie in my garden, and many times they were the amount keeping me from having run out of money. I felt and believed that my decision to kill myself under these terms and conditions put me into the category of a soldier who risks life for a greater good.

Now, in my objection to the IRS proof of claim, I say that IRS caused me to try to take my life, and IRS' response -- IRS denies this. When I talked with Rachel Zepeda, the Assistant US Attorney

* This should read "reform" ** this should read "of my"

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in Arizona, she said the denial was based on not having any knowledge. For this reason I included in my interrogatories questions concerning the treasury Internal Inspector Ralph Castillo who came to my house in 1996 with copies of letters which clearly stated my intent. In the United States' answer, the existence of Ralph Castillo is admitted.

Your Honor, I had written, in the letters that Mr. Castillo brought with him to my house, that I would stockpile letters to mail out the night I killed myself. On May 25, 1997, I mailed out over 100 letters saying that I was about to kill myself because my property had indeed been foreclosed as a result of wrongful IRS actions.

When I came home from mailing these letters, I drank Gran Mariner*, ate goat's cheese and -- and got into my car about 4:00 a.m. The exhaust was funneled inside. I did not believe that I would ever see another day in this world. I was sad about that, but it was a great relief to imagine peace.

My neighbor, who was walking his dog earlier in the morning than I would have imagined, saw my car running, saw me slumped inside and called 911. I was in critical care for hours, and I was told later

* Grand Marnier

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that, when I was brought around, my first words were, "I didn't make it." At that time I thought my life was my own; now I do not believe that. I -- I do not believe that, and I do not feel I will try to kill myself again.

It is imperative that I deny being a taxpayer, as that term is defined in the Internal Revenue Code. 26 USC Section 7701(a)14 says, "The term taxpayer means any person subject to any Internal Revenue tax." 26 USC Section 1313(b) says, "Notwithstanding Section 7701(a)14, the term taxpayer means, any person subject to a tax under the applicable revenue laws."

Your Honor, I know of nothing that makes me subject to or liable for any Internal Revenue tax, and I have sent by certified mail return receipt three requests for statute determinations that identified me as a person liable for or subject to a tax. No such statutes or determination has been provided to me, not even by the Freedom of Information Act disclosure agent, officer, or Rachel Zepeda.

Now, when I said this at the preliminary hearing, you set interrogatory dates. In keeping with those dates, I simply questioned the Assistant US Attorney, Your Honor, his answers do not

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identify any statute or determination that identifies me as a person liable for or subject to a tax. Many of his answers said I am obligated to file a return, but only one of his answers gave a statute to substantiate the supposed obligation.

That answer identifies Section 61 and Section 6012. When I went to these sections I found that Section 61 defines gross income, while Section 6012 says, "Returns with respect to income taxes under Subtitle A shall be made by the following individual having for taxable year gross income which equals or exceeds the exemption amount."

Your Honor, Section 4441* defines taxable year. And it says, "For purposes of this subtitle, the term taxable year means the taxpayer's annual accounting period if it is a calendar year or a fiscal year." As previously stated, 7701(a)14 says: "The term taxpayer means any person subject to any Internal Revenue tax."

Your Honor, the IRS Privacy Act Section 609 specifically states, "Our legal right to ask for information is Internal Revenue Code 6001, 6011 and 6012(a) and their regulations." They say that "You must file a return or statement with us for any tax you are liable for." That's the end of that quote.

* this should read, 441

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And I absolutely agree. Being liable for a tax is obviously a prerequisite to any requirement to make a return.

Section 6001 and 6011 clearly state that, "Returns shall be made by persons who are liable for or made -- who are liable for or made liable for a tax." Section 6012 states that, "Returns shall be made by individual -- every individual having for the taxable year" -- and again the term taxable year is defined in 441 (b) as the taxpayers annual accounting period.

And as previously stated, Section 7701(a)14 defines the term taxpayer to mean any person subject to any Internal Revenue tax. Section 1313(b) defines the term taxpayer to mean any person subject to a tax under the applicable revenue law.

The US Court of Appeals for the 5th Circuit says, "We see no distinction between the phrases liable for such tax and subject to a tax." *Houston Street Corporation*, CIR 84 F.2d 821, and that was 1936. Again I can find no provision that makes me liable for or subject to any Internal Revenue tax or imposes any obligation or legal duty upon me. And to date, I am unable to obtain any information from IRS or Mr. Lucero to document IRS' presumption that I am

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one who is liable for or subject to any revenue tax.

Now, I do find sections in the IRS Internal Revenue Code, and it imposes tax on activity such as the importation of tobacco products, and sections in the code that makes the importer of the tobacco products liable for that tax. For example, the manufacturer, importer of tobacco products should be liable for the tax imposed thereon by Section 5701, and that's 26 USC 5703(a)l.

I find no revenue tax, no revenue law that imposes a tax on any activity or property that has anything to do with me. And I find no revenue law that makes me subject to or liable for any revenue

tax. I do know, Your Honor, that if I were to file a signed tax return, I would be providing prime facie evidence that I am a taxpayer, and I cannot do that.

I must, for the sake of my life and my well-being, deny being a taxpayer as that term is defined in the Internal Revenue Code. I must tell you, every time I requested the statute or determinations that made me liable for or subject to Internal Revenue taxes, I fully expected them to be provided by return of post, but they were not. Thus, I am more and more convinced that it is true, as stated in *Flora v United States* -- I've got that on

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the desk, so I don't know the little numbers --

THE COURT: Do you want to get it? That's fine, if you think it's important.

MS. KLINE: 362 US 145, 1959, that "Our system of taxation is based upon voluntary assessment and payment, not upon distraint." In conclusion, I will say that "The Supreme Court has stated in a number of decisions that it is the established rule not to extend taxing statutes beyond the clear import of the language used or to enlarge their operations so as to embrace matters not specifically pointed out.

The Court further stated that, in cases of doubt, the taxing statutes are construed most strongly against the Government and in favor of those upon whom the tax is sought to be laid, *Gould v Gould* 245 US 151, 153 and *United States v Merriam* 263 US 179, 187 to 188.

Your Honor, if the United States Attorney's office has not been able to provide statute and/or determinations that make me subject to or liable for Internal Revenue taxes, then I implore you not to order me to file returns.

THE COURT: Okay.

MS. KLINE: Thank you.

THE COURT: Mr. Lucero?

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MR. LUCERO: Your Honor, the Internal

Revenue Service filed a proof of claim that shows estimated liability for 1987, 1993, 94, 95, 96 under the Bankruptcy Code. That proof of claim is a prima facie statement that taxes are due and owing unless rebutted by the debtor by filing an objection. She has done that; however, the burden shifts to her to show why that tax is not due and owing.

She has stated repeatedly that she is not going to file tax returns and that -- for whatever reason, I won't get into it, but until she rebuts the presumption that that proof of claim is valid, then it is valid. I can call Ms. Kline to ask some questions as to the nature of it, and I think I will do that right now. I would like it call Ms. Kline as a witness.

THE COURT: All right, Ms. Kline, would you step forward, raise your right hand and be sworn.

KAREN KLINE

After having been first duly sworn under oath, was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. LUCERO:

Q. Would you please state your name for the record?

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A. My name is Karen Mary Felicitus Kline.

Q. And you are the debtor in this bankruptcy proceeding?

A. I am indeed.

THE COURT: Ms. Kline, if you would pull the microphone over in front of you so we can hear it.

THE WITNESS: Can I try it -- is this better?

THE COURT: I think so, but the closer you speak into it, the better off we are.

Q. Ms. Kline, were you employed during 1987?

A. I was.

Q. And what was your -- what was your employment as?

A. Let me explain something, since all of that happened at that time, I ended up with a bad B-12 deficiency, and I don't -- for me to be able to write anything down, I have to actually look up the documents, so I can't just answer him. In order to answer your interrogatories, I had to go and find things to look at, so I can't -- I can't actually answer it unless I look at my answers, which doesn't seem like very good testimony. I just know that in 87 I didn't get paid from the people that I did work for.

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Q. Let me do it this way. Did you do advertising sales during 1987 on a commission basis?
A. Yes, but I never got the commissions.
Q. In 1993 were you a real estate agent?
A. Yes.
Q. Did you also receive rental income?
A. Yes.
Q. In 1994, again were you a real estate sales person --
A. I was.
Q. -- based on commissions?
A. Yes.
Q. And you had some small rental income?
A. Well, that was the year that that agent drove all the tenants --
Q. But did you have rental income?
A. I got some.
Q. The same thing for 1995?
A. 95 is very tricky because by then I didn't have the -- I didn't have the money to go on as a realtor. To be a realtor you really have to have access to the computer, and that cost was $659, so when they wouldn't let me use the computer anymore, I had no way of proceeding.
Q. Let me back up. In 1993 did you get a

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commission, or were you entitled to get a commission of $47 ,000?
A. No, I never got a commission that high.

Q. Okay. And in 1996, what did you do?
A. In 96? From the time that that stress began happening, the -- I had no idea I had the Vitamin B deficiency. I just knew my bones hurt and I knew I wasn't able to organize -- when I was a realtor I could do huge amounts of tax,* answer huge numbers of calls, do very stressful things and remain calm, okay. When the pain in my legs would wake me up at night, I thought the -- I couldn't think clearly because I never slept, okay? So 96 is way into that, and I am afraid I don't -- without looking at my documents, I can't tell you. I can't tell you.
Q. Okay. You didn't file a return for any one of those years, 1987 --
A. My -- I don't feel like I didn't, so I feel like I did, and the IRS lost it, just like they lost the 84 one.
Q. So you filed returns previous to that year?
A. I had indeed. Up until IRS did that to me, I used to send IRS Christmas cards.
Q. And you filed returns in 88 and 90, 91 and 92?

* tasks

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A. I believe I did.
Q. Okay. You didn't file returns in 93,94,95, or 96.
A. From the time that IRS began doing that to me, I really found it impossible to do the work, to actually do -- it made me -- I felt like I couldn't ever do it right to satisfy them, so I couldn't do it. So I would hire people to enter the numbers that I would have, like records -- because I previously hired an accountant to do them for me so I would do them more accurately, okay? But once that began happening, it was just like I couldn't make myself do it because I felt like there was no way of doing it so that they would be satisfied.
Q. Did you file a tax return in 1997?
A. I certainly did not.
Q. Okay.
MR. LUCERO: That's all I have, Your

Honor.
THE COURT: Okay. Ms. Kline, do you care to offer any other testimony while you are on the stand? It's hard to cross-examine yourself, I know.
CROSS-EXAMINATION/TESTIMONY
MS. KLINE: I think that probably the important thing is that there was a distinct change

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in -- I just could not get myself to do it, and so I would hire people. I spent hundreds of dollars to pay them to enter the things I had previously done. I had done a program in my little computer to make the records be clear, and at that point I had no idea— at that point it was -- I could not -- to me, it seemed like, if it was the Government, if it was the Internal Revenue Service, they would certainly be doing like the right thing. They would be doing the right thing.

So it didn't occur to me, when they were doing these things that were impossible to live with, that I could go to our law and find something to protect me. So at that point I went to -- I went and looked up human rights in the library and I found the Declaration of Human Rights from like the -- I forget the name of it, and that certainly said the people had the right to work; they had the right to have their employment not taken from them. And I began sending that out. I sent out a lot of letters trying to report* the IRS, but -- I won't take any more of your time. That's about it.

THE COURT: Okay.
MS. KLINE: Thank you.
THE COURT: Yes, ma'am. Mr. Lucero?

* reform

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MR. LUCERO: Nothing further.
THE COURT: Ms. Kline, anything further?
MS. KLINE: Are we at the point where you do argument?

App. 33

RECORD OF FEDERAL TAX ACCOUNT

Name: Karen M. Kline
TIN: 393-42-9616

Date: [redacted]
Tax Period: December 31, 1984
Form: 1040

Date of Credit or Assessment	Description	Assessments, Refunds or Transfers	Credits	Account Balance
10-20-86	Tax liability assessed	.00		$0.00
04-15-85	Payment with return		692.80	-692.80
06-19-95	Subsequent payment		400.00	-1,092.80
04-04-86	Payment with return		23.94	-1,116.74
05-05-86	Payment with return (04-15-85 transferred to 8312 account)	692.80		-423.94
10-27-86	Credit applied to 8512 account	423.94		0.00
10-27-86	Interest credit		21.81	-21.81
10-27-86	Interest credit applied to 8512 account	21.81		0.00
08-17-87	Tax liability assessed	1,002.35		1,002.35
04-15-85	Withholding credit		578.41	423.94
08-17-87	Failure to file penalty	105.99		529.93
08-17-87	Interest assessment	139.66		669.59
05-03-91	Subsequent payment		350.00	319.59
06-27-91	Subsequent payment		766.97	-447.38
07-22-91	Interest assessment	341.41		-105.97
07-22-91	Failure to pay tax penalty	105.97		0.00
03-29-93	Credit returned from 8512 account		423.94	-423.94
03-29-93	Interest credit returned from 8512 account		21.81	-445.75
03-29-93	Failure to pay tax penalty decrease		105.97	-551.72
03-29-93	Interest decrease		378.12	-923.84
03-29-93	Credit applied to 8912 account	86.23		-843.61
03-29-93	Credit applied to 9012 account	360.96		-482.65
03-29-93	Refund	613.66		131.01
03-29-93	Interest allowed on refund		131.01	0.00
04-05-93	Subsequent payment applied to 8512 account (part of 06-27-91 payment)	557.66		557.66
04-05-93	Correction of credit interest	66.11		623.77
04-05-93	Interest assessment	14.15		637.92
10-11-93	Credit returned from 8912 account		86.23	551.69
10-11-93	Credit returned from 9012 account		360.96	190.73
10-11-93	Correction of credit interest		53.52	- 137.21
10-11-93	Interest decrease		9.44	127.77
12-13-93	Interest assessment	1.56		129.33
12-27-93	Failure to file penalty decrease		20.11	109.22
12-27-93	Interest decrease		109.22	0.00
Totals		4,534.26	4,534.26	0.00

RECORD OF FEDERAL TAX ACCOUNT

Name: Karen M. Kline
TIN: 393-42-9616

Date: [redacted]
Tax Period: December 31, 198[redacted]
Form: 104[redacted]

Date of Credit or Assessment	Description	Assessments, Refunds or Transfers	Credits	Account Balance
06-09-86	Tax liability assessed	1,885.06		$1,885.06
04-15-86	Withholding credit		283.00	1,602.06
04-25-86	Payment with return		500.00	1,102.06
06-09-86	Failure to pay tax penalty	13.52		1,115.58
06-09-86	Interest assessment	18.11		1,133.69
06-30-86	Credit applied from 8312 account		189.71	943.98
06-30-86	Overpayment interest applied from 8312		6.19	937.79
10-27-86	Credit applied from 8412 account		423.94	513.85
10-27-86	Overpayment interest applied from 8412		21.81	492.04
12-11-86	Subsequent payment		75.00	417.04
12-22-86	Subsequent payment		100.00	317.04
12-29-86	Subsequent payment		365.70	-48.66
02-09-87	Interest assessment	16.40		-32.26
02-09-87	Failure to pay tax penalty	10.39		-21.87
02-09-87	Refund	22.01		0.14
02-09-87	Interest allowed on refund		.14	0.00
03-29-93	Subsequent payment (part of 06-27-91 payment transformed from 8412		557.66	-557.66
03-29-93	Credit returned to 8412 account	423.94		-133.72
03-29-93	Overpayment interest returned to 8412	21.81		-111.91
06-28-93	Failure to pay tax penalty decrease		23.91	-135.82
06-28-93	Interest assessment	332.20		196.38
11-08-93	Subsequent payment		282.61	-86.23
02-14-94	Subsequent payment applied to 8912 (part of 11-08-93 payment)	86.23		0.00
Totals		2,829.67	2,829.67	0.00

RECORD OF FEDERAL TAX ACCOUNT Page

Date: [redacted]
Name: Karen M. Kline Tax Period: December 31, 198
TIN: 393-42-9616 Form: 104

Date of Credit or Assessment	Description	Assessments, Refunds or Transfers	Credits	Account Balance
11-05-90	Tax liability assessed	4,215.00		$4,215.0
10-09-90	Withholding credit		1,000.00	3,215.0
11-05-90	Failure to file penalty	948.38		4,163.3
11-05-90	Failure to pay tax penalty	142.52		4,305.9
11-05-90	Interest assessment	319.18		4,625.0
10-19-90	Subsequent payment		500.00	4,125.0
03-04-91	Subsequent payment		4,237.54	-112.4
03-25-91	Interest assessment	58.16		-54.3
03-25-91	Failure to pay tax penalty	54.30		0.0
03-29-93	Credit applied from 8412 account		86.23	-86.2
03-29-93	Interest assessment	86.23		0.0
10-11-93	Credit returned to 8412 account	86.23		86.2
02-14-94	Subsequent payment transferred from 8512 account (part of 11-08-93 payment)		86.23	0.0
02-14-94	Interest assessment	3.86		3.8
02-14-86	Underpayment cleared		3.86	0.0
Totals		5,913.86	5,913.86	0.0

RECORD OF FEDERAL TAX ACCOUNT Page

Name: Karen M. Kline
TIN: 393-42-9616

Date: [redacted]
Tax Period: December 31, 199
Form: 104

Date of Credit or Assessment	Description	Assessments, Refunds or Transfers	Credits	Account Balance
11-25-91	Tax liability assessed	7,935.00		$7,935.0
04-15-91	Extension of time for filing to 08-15-91	.00	1,000.00	6,935.0
08-19-91	Extension of time for filing to 10-15-91	.00	.00	6,935.0
10-17-91	Payment with return		1,000.00	5,935.0
11-25-91	Estimated tax penalty	309.00		6,244.0
11-25-91	Failure to pay tax penalty	267.40		6,511.4
11-25-91	Interest assessment	427.57		6,938.9
02-05-92	Subsequent payment		500.00	6,438.9
06-15-92	Subsequent payment		1,000.00	5,438.9
09-04-92	Subsequent payment		2,000.00	3,438.9
11-16-92	Subsequent payment		2,000.00	1,438.9
01-11-93	Subsequent payment		2,000.00	-561.0
02-08-93	Interest assessment	155.36		-405.6
02-08-93	Failure to pay tax penalty	405.67		0.0
03-29-93	Credit applied from 8412 account		360.96	-360.9
03-29-93	Interest assessment	360.96		0.0
10-11-93	Credit returned to 8412 account	360.96		360.9
01-24-94	Subsequent payment —		381.39	-20.4
02-14-94	Interest assessment	20.43		0.0
Totals		10,242.35	10,242.35	0.0

A Messy Business

Can the IRS clean up its act and pacify the nation's angry taxpayers?

U.S. News & World Report, April 8, 1996

She was the unlikeliest of tax protesters: a 51-year-old product of Catholic schools, a moderate Republican who crossed lines to vote for Bill Clinton, a real-estate agent in New Mexico who wasn't even aware that antitax rebels existed until a couple of years ago. But when Karen Kline filed and paid her federal taxes for 1984-a year in which she earned less than $11,000 - she triggered a chain of events that helped steal her livelihood and shake her faith in government. For reasons that the IRS itself cannot explain, the agency ignored the calculations on Kline's 1040, determining that she owed nothing and had overpaid by $424. In the ensuing tragedy of errors, she was sent a large refund check and then asked to return the money. She mailed in payments and received a series of bills growing to over $1,000. Her bank account was levied and emptied twice. Government records show thousands of dollars moving in and out of her 1984 tax account over the course of eight years in an endless series of oversights and corrections, payments and credits. Last April, instead of sending a 1040, Kline mailed the IRS a bitter letter, accusing the agency of destroying her business, treating her like a criminal and jeopardizing her health. The IRS now admits its mistake: All Kline really owed for 1984 was a late filing penalty of $86.

Tax collectors have been dodging stones ever since biblical times: indeed, the history of the nation begins with a tax revolt. But the chorus of voices challenging the IRS today is rising to a pitch not heard in decades. Unlike the 1980s, when tax rates were the issue, the entire existence of the current tax collection system is undergoing tenacious scrutiny in Washington. Bill Archer, chairman of the tax-writing House Ways and Means Committee, pledges to "remove the IRS totally and completely from every American's individual life." And in a poll by the Tarrance Group *for U.S. News,* fewer than a quarter of registered voters said that the country would be worse off if the IRS were abolished; more than a third thought the agency's demise would be an improvement, while the rest were neutral or undecided. "There is a rebellion against the

IRS going on that is just astonishing," observes House Speaker Newt Gingrich. "The hostility is unbelievable." Adds House Majority Leader Richard Armey: "The resentment is very big and very real."

Targets. IRS revenue officer Susan Ryan of Austin, Texas, feels the anger bearing down on her from all sides. Last fall, federal authorities charged an anti-IRS car salesman with plotting to blow up the agency's Austin Service Center. "We're being targeted," frets Ryan, "and I think everyone else in the IRS thinks we're being targeted." The tax-man-be-damned attitude has made this the worst time in memory for IRS employees who have to deal with the public, adds Robert Tobias, president of the National Treasury Employees Union, which represents IRS workers. The agency's front-line troops, notes Tobias, are encountering "more hostility, more resistance and less cooperation." Indeed, IRS employees have received an average of 718 threats of violence annually in the 1990s. As a result, many agency workers now keep their home phone numbers unlisted, and some even use pseudonyms on the job. Most frightening was the 100-pound fertilizer bomb that came just one spark short of blowing up a Reno, Nev., IRS building in December. A disgruntled taxpayer has pleaded guilty to planting the device in the building's parking lot and has agreed to testify against a co-worker. Meanwhile, last week, in a tense standoff in east central Montana, law enforcement officials surrounded an armed band of radical tax protesters wanted on bank fraud charges.

The cause of this public hostility is a subject of contention. Gary Bell, chief inspector for the IRS, attributes last year's 21 percent jump in the number of threats, following a two-year decline, to the "copycat effect" in the aftermath of the Oklahoma City bombing incident. Union leader Tobias believes people are following the lead of IRS-bashing politicians. And many people undoubtedly are projecting their anger over high taxes or the complexity of the tax code. But there also is a growing frustration with the performance of the IRS itself. In a University of Michigan Business School survey, for example, the IRS ranks lowest in customer satisfaction out of 200 companies and government agencies. In addition, the *U.S. News* poll found that anti-IRS animosity, while not tremendously wide, runs deep. Although Americans are pretty evenly split in their approval and disapproval of the agency, those who strongly disapprove out-number those who strongly approve by 3 to 1. That's understandable enough: The

IRS is, after all, the symbol for that weekly or fortnightly or monthly federal tax bite from mil-lions of paychecks. Still, the vast majority of Americans have little direct interaction with the agency short of mailing in a return each April. But many of those who have come in close contact with IRS operations — like Karen Kline — have been left with a painful awareness of the agency's shortcomings...

The above is the beginning of the story, pages 28 and 29.

The job of tax collections was never intended to be a particularly friendly one, but IRS statistics show that the agency's aggressiveness has increased significantly. The number of levies slapped on bank accounts and paychecks by IRS jumped from fewer than half a million in 1979 to 2.9 million in 1994...

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